IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-711-SB-2003 (O&M)

Date of Decision: August 29, 2013

Sachin and another

...Appellants

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Ashit Malik, Advocate,
for the appellants.

Mr. Anupam Sharma, AAG, Haryana,
for the respondent.

NARESH KUMAR SANGHI, J.

1. Challenge in this appeal is to the judgment of conviction and the order of sentence, dated 5.2.2003, passed by the learned Additional Sessions Judge, Faridabad, whereby the appellants were held guilty for the offences punishable under Sections 489A, 489B, 489C and 489D, IPC, and each of them was ordered to undergo the following sentences:-

Under Section	Sentence (R.I.)	Fine (in ₹)	In Default (R.I.)
489A, IPC	10 years each	5,000/- each	2½ years each
489B, IPC	10 years each	5,000/- each	2½ years each
489C, IPC	7 years each	3,000/- each	1¾ years each
489D, IPC	10 years each	10,000/- each	2½ years each

All the substantive sentences were ordered to run concurrently.

2. The brief facts of the case are that on 11.12.2001, at about 5:00 p.m., both the appellants while riding a motorcycle, bearing Registration No. UP-14-H-1285, came to Kapoor Lamp

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Chowk, Faridabad, and stopped in front of the *Khokha* (a wooden cabin placed by the side of the road to sell articles) of the complainant, Lallan Kumar (PW-1). One of the appellants handed over a currency note of ₹100/- to Lallan Kumar and bought a packet of Gold Flake cigarettes. After charging the price of the packet of the cigarettes, the remaining amount was returned by the complainant to the appellants. After that, both the appellants stopped their motorcycle in front of the *Khokha* of Dinesh (PW-2). There also, the appellants handed over a currency note of ₹100/-. Upon this, the complainant, Lallan Kumar (PW-1) became suspicious and he checked the said currency note and found that the emblem of 'Ashoka' on the currency note was missing and its number was 'JCL 88 J 262'. The complainant, Lallan Kumar, went to the *Khokha* of Dinesh (PW-2) and found that the currency note given by the appellants to Dinesh was also of the same number. He loudly made noise that the appellants were fraud. The appellants tried to run away, but were nabbed. The appellants disclosed their names as Sachin and Deepak Mathur. Both of them were handed over to the police. Vide recovery memo. Ex.PB, one motorcycle bearing Registration No. UP-14-H-1285; two counterfeit currency notes of the denomination of ₹100/- each, both bearing No. 'JCL 88 J 262'; one black colour bag containing 10 packets of Gold Flake cigarettes, currency notes totaling ₹800, and change (coins) of ₹45/-, were recovered. Personal search of appellant No. 1, Sachin, resulted in the recovery of three currency notes of ₹100/- each, which were also

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bearing the same serial number, i.e. 'JCL 88 J 262', from the right side pocket of his pant and one registration certificate of motorcycle No. UP-14-H-1285, from the pocket of his shirt, which were taken into possession vide separate recovery memo Ex.PB/1. When appellant No. 2, Deepak, was being searched on the basis of suspicion, he took out two currency notes of ₹100/- each from the right side pocket of his pant and tried to tear the same. On verification, the number of both the said currency notes was also found as 'JCL 88 J 262'. Besides this, one driving licence was also recovered from the pocket of his shirt. The said torn currency notes and the driving licence were also taken into possession vide recovery memo Ex. PB/2.

3. The appellants were interrogated and during the said period they suffered their disclosure statements (Exs. PK & PK/1) and on the basis of the same, appellant No. 1, Sachin, got recovered one computer monitor (make Samsung), one CPU, one key board (make BTC), one mouse, a cord and a paper from the Almirah which was containing two prints of the currency note of the denomination of ₹50/-. All these articles were taken into possession vide recovery memo Ex. PK/2.

4. The appellants also suffered disclosure statements (Exs. PB/3 & PB/4) and on the basis of the same, counterfeit currency notes of the denomination of ₹100/- each were recovered from Umesh Kumar (PW3) and Bhushan (PW4), vide recovery memos. Exs. PE and PF/1. All the said currency notes were got checked from the Reserve Bank of India and opinion

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(Ex.PI) was obtained.

5. In the interregnum, a police memo. (Ex. PA) was sent to the police station, on the basis of which formal FIR (Ex. PA/2) was recorded. The formalities of the investigation were completed. During investigation, a report (Ex. PX) with regard to fake currency was also obtained from Nasik. After completion of the investigation, the charge-sheet (report under Section 173, Cr.P.C.) was presented before the learned Area Judicial Magistrate. Since the offences punishable under Sections 489A, 489B, 489C and 489D, IPC, were exclusively triable by the Court of Session, therefore, the case was committed to the said Court.

6. The appellants were charge-sheeted for the offences punishable under Sections 489A, 489B, 489C and 489D, IPC, to which they pleaded not guilty and claimed trial. In order to substantiate its case, the prosecution examined the following witnesses:

PW1 Lallan Kumar: He is the complainant of the case. He did not support the prosecution version, therefore, he was declared hostile. With the permission of the Court, the learned Public Prosecutor cross-examined this witness, but nothing favourable to the prosecution could be elicited from his mouth.

PW2 Dinesh: He too did not support the prosecution case and from his cross-examination nothing could be elicited in favour of the prosecution.

PW3 Umesh Kumar: He too was declared hostile

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by the prosecution.

PW4 Bhushan: He also resiled from his previous statement.

PW5 Arjun. He too was declared hostile by the prosecution.

PW6 Punni Lal: He too toed PW1 to PW5 and did not depose in favour of the prosecution.

PW7 C.L. Puri, an official from the Reserve Bank of India, New Delhi. He deposed that he had prepared report (Ex. PI) and found that the currency notes recovered by the police from the prosecution witnesses and the appellants were fake.

PW8 ASI Munshi Ram, Investigating Officer: He deposed in detail regarding the statement suffered by the complainant, Lallan Kumar (PW1); sending the police memo to the police station for registration of the FIR; arrest of the appellants; recording of the disclosure statements of the appellants; recovery of computer monitor etc.; and recovery of the fake currency notes from the witnesses. He also deposed about the remaining investigation.

PW9 HC Ran Singh: He deposed that on the date of occurrence, he was accompanying ASI Munshi Ram (PW8) and he too deposed about the investigation carried out by PW8.

7. Before completion of the prosecution evidence, the

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learned Public Prosecutor tendered into evidence the report (Ex. PX) received from the Nasik Press.

8. The incriminating material appearing on record, was put to the appellants in their respective statements recorded under Section 313, Cr.P.C. They denied all the allegations and pleaded innocence.

9. No evidence in defence was led.

10. After hearing learned counsel for the parties, learned trial Court held both the appellants guilty for having committed the offences punishable under Sections 489A, 489B, 489C and 489D, IPC, and awarded various terms of sentences, as has been detailed in the initial part of this judgment.

11. Learned counsel for the appellants submitted that not a single private person has supported the prosecution version, therefore, only on the basis of the deposition of two police officials, i.e. PW8 and PW9, the appellants could not be held guilty. He further submitted that even if the case of the prosecution is taken at its face value, then also they cannot be held guilty for various offences for retaining the fake currency notes since the prosecution has failed to show that the appellants had the requisite knowledge about the fake currency notes. He further submitted that the recovery of computer monitor etc., could not be proved since the prosecution has miserably failed to establish that the place where from such articles were recovered belonged to the appellants. On the strength of the above submissions, he prayed for acceptance of the appeal and

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acquittal of the appellants.

12. On the other hand, learned counsel for the State vehemently opposed the submissions made by the learned counsel for the appellants and submitted that from the testimony of PW7, PW8 and PW9, it has been proved by the prosecution that the appellants not only retained the fake currency, but they knowing it to be a fake currency, used the same. He further submitted that it has also been proved from the recovery of computer monitor and papers etc. that the appellants were preparing the fake currency. Therefore, the learned trial Court had rightly held them guilty on all the four counts and awarded the appropriate sentences. He also produced the affidavits of the Superintendent, District Jail, Sonepat, showing the period of incarceration suffered by each of the appellants, which are taken on record.

13. I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

14. Before analyzing the submissions made by the learned counsel, it is apposite to have a glance over the four provisions of the Indian Penal Code, under which the appellants have been held guilty. The relevant excerpts of Sections 489A, 489B, 489C and 489D, IPC, are as under:

> *"489A. Counterfeiting currency-notes or bank-notes.-*
>
> *Whoever* ***counterfeits, or knowingly***

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performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished……" (emphasis added)

"489B. Using as genuine, forged or counterfeit currency-notes or bank-notes.-

Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished... ..." (emphasis added)

"489C. Possession of forged or counterfeit currency-notes or bank-note.-

Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished... .." (emphasis added)

489D. Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes.-

Whoever makes, or performs, any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished……" (emphasis added)

15. Having glanced over the penal law, now it has to be

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discussed as to what offence/offences have been committed by the appellants.

16. It is the conceded position that the FIR in the present case was registered on the statement of PW1, Lallan Kumar. However, he has completely resiled from his previous statement and proposed not to support the prosecution version. With the permission of the Court, the said witness was thoroughly grilled by the learned Public Prosecutor, but nothing could be brought on record in favour of the prosecution. The very basis on which the FIR was registered and the appellants were arrested becomes doubtful from his deposition. Even PW2 Dinesh, PW3 Umesh Kumar, PW4 Bhushan, PW5 Arjun and PW6 Punni Lal, from whom the appellants had allegedly purchased the articles after paying each one of them the fake currency notes of the denomination of ₹100/- each, have not supported the prosecution case. Even they have denied that the appellants handed over them the fake currency notes and the same were handed over to the police. PW8 ASI Munshi Ram is the investigating officer. He had deposed in detail with regard to the statement suffered by the complainant, Lallan Kumar (PW-1), and forwarding of the police memo to the police station for registration of the case on the basis of which, formal FIR (Ex. PA/2) was recorded. He did depose about the recovery of three currency notes of the denomination of ₹100/- from the person of appellant No. 1, Sachin, and two currency notes of the same denomination from appellant No. 2, Deepak. He also deposed that after the arrest of

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the appellants, they suffered their disclosure statements and in pursuance thereof, appellant No. 1, Sachin, not only got recovered a computer monitor and other apparatuses used for processing the fake currency notes, but also got recovered a paper on which one side of the denomination of ₹50/- was printed at two places. He also deposed that one printer, paper book, cutter, pencil, fevi-stick and one scale (Exs. P14 to P20) were got recovered by appellant No. 2, Deepak. However, no fake currency notes were recovered from his (Deepak) room. PW9 HC Ran Singh, who was accompanying PW8, also supported the prosecution version and corroborated the deposition suffered by PW8 ASI Munshi Ram. From the testimony of PW7 C.L. Puri, an official from the Reserve Bank of India, New Delhi Branch, it is proved that the currency notes recovered from the appellants were fake. Even the report (Ex. PX) received from the Nasik Press further strengthens the opinion of PW7 C.L. Puri that the currency notes recovered from the appellants were fake.

17. After analyzing the above statements and the material, it transpires that appellant No. 1, Sachin, from whom not only the computer and other related appliances were recovered but the semi processed paper containing two prints of one side of the denomination of a ₹50/- note were also recovered, had counterfeited the said currency and, therefore, he had committed the offence punishable under Section 489A, IPC. Likewise, he was also found in possession of forged or counterfeit currency notes having knowledge of the same to be fake ones,

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therefore, he has rightly been held guilty for the offence punishable under Section 489C, IPC. It has also emerged on record that the computer and other appliances as well as partly processed paper containing print of the note of the denomination of ₹50/- would bring his misdeeds within the mischief of Section 489D, IPC. Therefore, he has rightly been convicted for the said offence as well.

18. So far as the conviction under Section 489B, IPC, of both the appellants is concerned, the same is not sustainable since the prosecution has miserably failed to prove that both or anyone of them sold or bought or received from any other person or otherwise used as genuine, any forged or counterfeit currency note or bank note, knowing or having the reasons to believe the same to be forged or counterfeit. Therefore, both the appellants deserve acquittal of the offence punishable under Section 489B, IPC.

19. So far as appellant No. 2, Deepak, is concerned, the prosecution has miserably failed to prove that he knowingly performed any part of the process of counterfeiting any currency note or bank note etc., therefore, his conviction and sentence for the offence under Section 489-A is not sustainable.

20. Likewise, the prosecution has also failed to prove that appellant No. 2, Deepak, made or performed any part of process of making or bought or sold or disposed of or had in his possession any machinery, instrument or material for the purposes of being used or knowing or having reason to believe

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that it was intended to be used for forging or counterfeiting any currency note or bank note. Mere possession of the printer and other related material *ipso facto* would not give rise to a presumption that the said instruments were there for making or performing any part of the process of the fake currency notes. Therefore, his conviction and sentence under Section 489D, IPC, is also not sustainable.

21. Appellant No. 2, Deepak, was found in possession of forged or counterfeit currency notes with the knowledge the same to be forged or counterfeit, his conviction under Section 489C, IPC, recorded by the learned Trial Court is affirmed.

22. While hearing learned counsel for the appellants on the quantum of sentence, he submitted that the occurrence had taken place 12 years back. At that time appellant No. 1, Sachin, was 23 years old while appellant No. 2, Deepak, was about 22 year of age. He further submits that neither of the appellants is a previous convict. Even after registration of the present case, they are not involved in any other criminal activity. He further submitted that both the appellants belonged to the business families and after registration of the case both of them have joined the main stream of the life. The marriage of appellant No. 1, Sachin, was solemnized in a respectable family in the year 2004 and he is blessed with a son and a daughter, and he is running his family business. However, he could not make any submission with regard to the marital status of appellant No. 2, Deepak, but submitted that he has the information that after the

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occurrence, even he (Deepak) is not involved in any other case. He also submitted that after filing of the appeal, the substantive sentence of the appellants was suspended on 29.1.2004, but they did not misuse the said concession in any manner. On the strength of the above submissions, he has prayed that the appellants be let off since each appellant has undergone more than two years of the substantive sentence.

23. Learned counsel for the State submitted that the appellants had committed serious offences, therefore, the sentences awarded by the learned Court below be maintained.

24. Keeping in view the fact that the appellants have suffered the protracted trial and appeal for approximately 12 years; they are first offender; three currency notes of the denomination of ₹100/- were recovered from appellant No. 1, Sachin, and two currency notes of the denomination of ₹100/- were recovered from appellant No. 2, Deepak; during the pendency of the appeal, the appellants were on bail, but they did not misuse the said concession; both of them have joined the main stream of life; and that Sachin has performed his marriage and is blessed with two children, therefore, by maintaining the conviction of appellant No. 1, Sachin, for the offences punishable under Sections 489A, 489C and 489D, IPC, his substantive sentences for all the counts is reduced to the period already undergone. However, the order of fine passed by the learned trial Court shall remain undisturbed.

25. Since appellant No. 2, Deepak, has been acquitted of

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the offences punishable under Sections 489A, 489B and 489D, IPC, and his conviction has been upheld for the offence punishable under Section 489C, IPC, only, and according to the affidavit produced by the learned counsel for the State, he has undergone two years, two months and eighteen days of the substantive sentence, therefore, his substantive sentence is also reduced to the period already undergone by him. The fine and the sentence in default imposed by the learned trial Court for the offence punishable under Section 489C, IPC, qua appellant No. 2, Deepak, shall remain undisturbed. However, the amount of fine for the remaining offences for which he has been acquitted, if deposited by him, shall be returned to him in accordance with law.

26. With the above modifications in the impugned judgment of conviction and the order of sentence passed by the learned Sessions Judge, Faridabad, the present appeal is partly allowed.

(NARESH KUMAR SANGHI)
JUDGE

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